



June 22, 2015

Citizen Suit Coordinator
Department of Justice
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
Email: richard.norwood@usdoj.gov

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Sent via Certified Mail and Electronic Mail

Re: Settlement Agreement – *San Francisco Baykeeper v. Central Concrete Supply, Co., Inc.*

Dear Citizen Suit Coordinator and Administrator McCarthy:

Attached as Exhibit 1, please find a copy of a Settlement Agreement between San Francisco Baykeeper ("Baykeeper") and Central Concrete Supply, Co., Inc. ("Central Concrete"). The Settlement Agreement resolves Baykeeper's claims against Central Concrete for Clean Water Act violations alleged in Baykeeper's Notice of Intent to Sue, which Baykeeper sent to Central Concrete on January 7, 2015. The parties have agreed to settle this matter without filing a complaint. The Settlement Agreement requires Central Concrete to capture and recycle all stormwater on site, thus eliminating stormwater discharges at its facility, to closely monitor its stormwater discharges, if any, and to take further measures if its pollution discharges continue to exceed EPA Benchmark levels and/or water quality standards.

If you have any questions or comments concerning the terms of the Settlement Agreement, please contact me at (510) 735-9700 x110 or nicole@baykeeper.org.

Sincerely,

Nicole C. Sasaki
Associate Attorney, San Francisco Baykeeper



Pollution hotline: 1 800 KEEP BAY
www.baykeeper.org

1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

Baykeeper v. Central Concrete – Notice to DOJ

June 22, 2015

Page 2 of 2

Cc:

Jared Blumenfeld, Regional Administrator

EPA Region 9

75 Hawthorne Street

San Francisco, California 94105

Cc via Electronic Mail:

Stephen Mansfield, Attorney for Central Concrete

Email: smansfield@akingump.com

Exhibit 1

SETTLEMENT AGREEMENT

WHEREAS, San Francisco Baykeeper, Inc. ("Baykeeper") is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of the San Francisco Bay and other area waters;

WHEREAS, Central Concrete Supply, Co., Inc. ("Central Concrete") operates a ready-mix concrete batch plant located at 790 Stockton Avenue, San Jose, California 95126 (the "Facility");

WHEREAS, Baykeeper and Central Concrete are collectively referred to herein as the "Parties";

WHEREAS, stormwater discharges associated with industrial activity at the Facility are regulated pursuant to the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 92-12-DWQ, as amended by Water Quality Order 97-03-DWQ, issued pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (hereinafter, the "Industrial Stormwater Permit"). These industrial activities include, *inter alia*, the manufacturing of concrete, gypsum, and plaster products, as well as support services, including fueling, concrete recycling, and the storage of bulk materials;

WHEREAS, effective July 1, 2015, stormwater discharges associated with industrial activity at the Facility will be regulated pursuant to the NPDES General Permit No. CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-0057 DWQ, issued pursuant to Section 402 of the Clean Water Act, 33 U.S.C. § 1342 (hereinafter, the "New Industrial Stormwater Permit");

WHEREAS, the Industrial Stormwater Permit includes the following requirements for all permittees, including Central Concrete: 1) develop and implement a stormwater pollution prevention plan ("SWPPP"), 2) control pollutant discharges using, as appropriate, best available technology economically achievable ("BAT") or best conventional pollutant control technology

SETTLEMENT AGREEMENT

6/14/15

("BCT") to prevent or reduce pollutants, 3) implement BAT and BCT through the development and application of Best Management Practices ("BMPs"), which must be included and updated in the SWPPP, and, 4) when necessary, implement additional BMPs to prevent or reduce any pollutants that are causing or contributing to any exceedance of water quality standards;

WHEREAS, on January 7, 2015, Baykeeper served Central Concrete, the Administrator of the U.S. Environmental Protection Agency ("EPA"), the Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board ("State Water Board"), and the Executive Officer of the Regional Water Quality Control Board ("Regional Water Board") with a notice of intent to file suit ("60-Day Notice") under Section 505(b)(1)(A) of the Federal Water Pollution Control Act ("Clean Water Act" or "the Act"), 33 U.S.C. § 1365(b)(1)(A), alleging violations of the Act and the Industrial Stormwater Permit at the Facility;

WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full Baykeeper's allegations in the 60-Day Notice through settlement and avoid the cost and uncertainties of litigation;

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AS FOLLOWS:

I. BEST MANAGEMENT PRACTICES

1. In order to further reduce or prevent pollutants associated with industrial activity from discharging via stormwater to the waters of the United States, Central Concrete shall implement additional appropriate structural and non-structural Best Management Practices ("BMPs") to, at a minimum, comply with Effluent Limitation B(3) and Receiving Water Limitation C(2) of the Industrial Stormwater Permit, as described more fully below.

2. **Site Map:** Within thirty (30) days of the Effective Date, Central Concrete shall update the Site Map included in the Facility SWPPP. The Site Map shall clearly denote the topography and the direction of stormwater flow for each drainage area of the Facility. The Site Map shall also identify property boundaries, known or suspected drop inlets, ground type (pervious or impervious), berms and the materials they are composed of, any permanent structures and

features, discharge points, and all other physical structures or items relevant under the Industrial Stormwater Permit or the New Industrial Stormwater Permit and in this Settlement Agreement.

3. **Designation and Protocol for All Sampling Locations:** Within thirty (30) days of the Effective Date, Central Concrete shall update the Facility SWPPP to fully describe any modifications to the discharge or sampling location, as shown on the Site Map and described in the existing SWPPP ("Designated Discharge Point"). While the Settlement Agreement is in effect, if Central Concrete makes any changes to the sampling location or the Designated Discharge Point at the Facility, Central Concrete shall update the SWPPP within forty-five (45) days and submit the revised SWPPP to Baykeeper, consistent with the requirements of Paragraph 9, below.

4. **Non-Structural Best Management Practices.** Beginning on the Effective Date, Central Concrete shall implement the following non-structural BMPs at the Facility:

a. **Site Sweeping:** Central Concrete shall mechanically sweep the accessible paved areas of the Facility and shall also sweep non-accessible areas by hand or vacuum at least two (2) times per day between October 1 and May 30 of each year (the "Wet Season") and at least one (1) time per day during the remaining portion of the year (the "Dry Season") on each day that Central Concrete is actively operating. Central Concrete shall keep a log or checklist, as appropriate, of the on-site sweeping activity performed ("Sweeping Log"), and shall direct employees and/or contractors to accurately complete the Sweeping Log. The Sweeping Log shall indicate the employee or contractor who conducted the sweeping, the location of the sweeping, and the dates the sweeping activities occurred. The Sweeping Log shall be made available for inspection by Baykeeper at any site inspection or within three (3) business days of a request by Baykeeper.

b. **Vehicle and Equipment Management:** Central Concrete shall continue to implement BMPs to reduce or minimize pollutant release from equipment such as forklifts, hydraulic lifts, trucks, and other heavy equipment that are parked or stored in areas of the Facility from which stormwater discharges. Such BMPs shall include relocating the vehicles

6-19-15

offsite to better facilitate sweeping of paved areas, placing drip pans under equipment stored or parked for a week or longer, weekly inspections for evidence of leaks from such equipment, and prompt clean-up of spills, drips, or leaks from such equipment. Any spilled substances and absorbent materials used in cleaning up spills shall be disposed of in accordance with all local, state, and federal laws and regulations.

c. **Vehicle and Equipment Maintenance:** Central Concrete shall not conduct routine (*i.e.*, non-emergency) vehicle or movable equipment maintenance or repair at the Facility in outdoor, uncovered areas from which stormwater discharges during rainfall events.

d. **Training:** Beginning on the Effective Date, and annually thereafter, and within thirty (30) days of hiring of new employees, Central Concrete shall conduct training for all appropriate employees to explain the requirements of the Facility's SWPPP to the extent applicable to such employee. Training shall focus on the employee's role in implementing various stormwater control measures including, for example, implementation of BMPs, sweeping, vehicle maintenance, and/or facility inspections. Training shall be conducted bilingually (*i.e.*, Spanish/English or other pertinent language) to the extent that such employee is not reasonably able to comprehend training in English. If and when appropriate, Central Concrete shall integrate any new training requirements resulting from this Settlement Agreement into the Facility SWPPP. Central Concrete shall also update the SWPPP, if and when appropriate, to identify the positions responsible for carrying out stormwater management, monitoring, sampling, and SWPPP implementation.

5. **Structural Best Management Practices:** By October 1, 2015, Central Concrete shall install a curb/berm at the Facility entrances/exits along Stockton Avenue and route all captured stormwater to the Facility's stormwater retention system for reuse in new concrete production. Upon installation of the curb/berm, stormwater discharges originating from industrial activities located at the Facility shall be eliminated.

6. If it becomes infeasible for Central Concrete to eliminate all stormwater discharges originating from industrial activities located at the Facility, Central Concrete shall propose and

111
6-19-15

submit to Baykeeper an Alternative BMP Plan for the Facility. Baykeeper shall have thirty (30) days from receipt to propose revisions to the Alternative BMP Plan. Within thirty (30) days of receiving Baykeeper's revisions, Central Concrete shall agree or disagree with Baykeeper's proposed revisions. Central Concrete shall provide to Baykeeper a revised Alternative BMP Plan incorporating Baykeeper's revisions and/or a letter explaining why any proposed revisions were not incorporated. Any disputes as to the contents of an Alternative BMP Plan shall be resolved pursuant to the Dispute Resolution provisions of this settlement agreement.

7. **Maintenance of Structural BMPs:** Beginning on the Effective Date, Central Concrete shall maintain all structural BMPs at the Facility in good operating condition and shall promptly repair any damaged or degraded structural BMPs.

8. **Amendment of SWPPP:** Within sixty (60) days of the Effective Date, Central Concrete shall amend the Facility SWPPP to incorporate the requirements and BMPs set forth in this Section I and thereafter submit the updated SWPPP to Baykeeper within ten (10) business days. Baykeeper shall have thirty (30) days from receipt of the amended SWPPP to propose any changes to the SWPPP. Within thirty (30) days of notification by Baykeeper of any proposed changes to the SWPPP, Central Concrete shall make all of Baykeeper's changes to the amended SWPPP unless Central Concrete timely requests a meet and confer in accordance with Paragraph 27 to discuss any concerns. Compliance with the SWPPP, as amended in accordance with this Paragraph provision, shall at all times be a requirement of this Settlement Agreement.

9. **Additional BMPs:** The BMPs included in this Section constitute a preliminary approach to stormwater management at the Facility for the first year of the agreement. If, after implementing these BMPs, the sampling conducted in accordance with Section II indicates that the Facility's stormwater discharges continue to exceed the Target Levels in Exhibit 2, or otherwise do not meet water quality standards, Central Concrete shall propose advanced treatment as part of any Action Plan prepared in accordance with Paragraph 14.

II. SAMPLING, MONITORING, INSPECTION & REPORTING

10. **Sampling Program - Stormwater:** If at any time Central Concrete discharges stormwater or non-stormwater from the Facility, Central Concrete shall collect and analyze the samples for the presence of each of the parameters set forth in the attached Exhibit 2. Central Concrete shall notify Baykeeper within three (3) business days of such discharge.

11. Should industrial processes materially change at the Facility, Central Concrete shall conduct sampling for any additional pollutants likely to be present in the Facility's stormwater discharges in significant quantities as a result of the changed industrial processes. Central Concrete shall notify Baykeeper of any such changes within thirty (30) days of such a change.

12. **Certified Lab:** Except for pH samples, which will be measured with an on-site calibrated pH meter in order to meet the 15 minute holding time requirement, Central Concrete shall have any stormwater samples collected at the Facility pursuant to this Settlement Agreement delivered to a California state certified environmental laboratory for analysis within the time needed for analysis within laboratory method allowable hold times. The laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or below the levels set forth in the attached Exhibit 2.

13. **Sample Result Reporting:** After the Effective Date, Central Concrete shall provide complete results from sampling and analysis to Baykeeper within ten (10) calendar days of receipt of the laboratory report from each sampling event.

14. **Action Plan:** If any stormwater or non-stormwater discharges occur during the term of the Settlement Agreement, Central Concrete must collect samples as detailed in Paragraph 10 above. Within thirty (30) days of receiving the laboratory report, Central Concrete must submit to Baykeeper an Action Plan.

15. **Contents of Action Plan:** If an Action Plan is required, it shall include the following:

- a. Whether the discharge was stormwater, non-stormwater, or both;
- b. Reasons that a discharge occurred;
- c. Whether the discharges exceeded the Target Levels in Exhibit 2;

- d. The possible sources of the Exceedance(s) during the applicable Wet Season;
- e. A proposal for and evaluation of new site-specific structural and non-structural BMPs designed to prevent future stormwater discharges and
- f. A schedule to implement any revised and/or additional BMPs by the earliest practicable time, and no later than October 1 of the next Wet Season.

16. **Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt to propose revisions to the Action Plan. However, if Baykeeper notifies Central Concrete within thirty (30) days of receipt of the Action Plan that it is unable to provide comments within thirty (30) days, Baykeeper shall have an additional fifteen (15) days to propose revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper's proposed revisions, Central Concrete shall consider each of Baykeeper's recommended revisions to the Action Plan and accept them or timely request, in accordance with Paragraph 27, a meet and confer to discuss.

17. **Implementation of Action Plan:** Central Concrete shall implement the Action Plan(s) adopted pursuant to this Settlement Agreement as an obligation of this Settlement Agreement.

18. Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Settlement Agreement are implemented, Central Concrete shall amend the Facility SWPPP to include all BMP revisions or additions not otherwise already implemented and included in the SWPPP. Within thirty (30) days thereafter, Central Concrete shall provide Baykeeper with a copy of such revised SWPPP.

19. During each Wet Season, Central Concrete has an ongoing obligation to evaluate the BMPs implemented at the Facility and included in this Settlement Agreement and any current or previous Action Plans, and, if Central Concrete has exceeded Target Levels, make attempts to reduce the concentrations to Target Levels or otherwise meet BAT or BCT, as appropriate, for the remainder of the Wet Season. Central Concrete shall use the results from subsequent stormwater samples as they become available to assist with their ongoing evaluation of the effectiveness of BMPs.

20. **Stipulated Payments:** Central Concrete shall pay the following stipulated payments during the Term of this Settlement Agreement.

a. \$500 for failure to collect a sample of any discharge of stormwater or non-stormwater from the Facility;

b. \$500 per day after the report due date for each failure to timely submit any document, report, or other communication required in this Settlement Agreement; and

c. \$500 per day payment for every business day (Monday through Friday, excluding state and federal holidays) past the due date that Central Concrete fails to submit any payments due under Paragraphs 23-25 of this Settlement Agreement.

d. Any stipulated payments described above shall be paid to Baykeeper within thirty (30) days of notification of the failure to comply.

21. **Site Access:** During the Term of this Settlement Agreement, Central Concrete shall permit representatives of Baykeeper to perform up to two (2) physical inspections per year of the Facility during operating hours ("Site Inspection"). Baykeeper shall provide Central Concrete twenty-four (24) hours' notice in advance of such Site Inspections. Baykeeper shall comply with all safety instructions provided by Central Concrete staff during all Site Inspections. During Site Inspections, Baykeeper shall be allowed to inspect and sample any stormwater discharges, logs, and take photos and/or videos.

22. **Reports:** During the Term of this Settlement Agreement, Central Concrete shall provide Baykeeper with a copy of all documents required to be submitted to the Regional Water Board or the State Water Board concerning the Facility's compliance with the Industrial Stormwater Permit or New Industrial Stormwater Permit. Such documents and reports shall be transmitted to Baykeeper via electronic mail at the time the documents are submitted to the Regional Water Board or State Water Board.

III. MITIGATION, FEES, AND COSTS

23. **Environmental Mitigation Funding:** As mitigation for the alleged violations set forth in Baykeeper's 60-Day Notice, within thirty (30) days of the Effective Date, Central Concrete

SETTLEMENT AGREEMENT

shall pay the sum of two thousand dollars (\$ 2,000.00) to The Rose Foundation, an environmental non-profit organization, for projects that will benefit the San Francisco Bay watershed. The Rose Foundation reports the grant funding made with the tendered funds to the U.S. Department of Justice, and the Parties, setting forth the recipient and purpose of the funds. Payment shall be made to The Rose Foundation, 1970 Broadway, Suite 600, Oakland, California 94612, within thirty (30) days of the Effective Date, with notice to Baykeeper.

24. **Reimbursement of Fees and Costs:** Central Concrete shall reimburse Baykeeper in the amount of fourteen thousand, one hundred and thirty-six dollars and twenty cents (\$14,136.20) to help cover Baykeeper's reasonable investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Settlement Agreement, bringing these matters to Central Concrete's attention, and negotiating a resolution of this action. Central Concrete shall tender said payment, payable to Baykeeper, within thirty (30) days of the Effective Date.

25. **Compliance Monitoring Funds:** If Central Concrete discharges stormwater or non-stormwater from the Facility, Central Concrete shall provide to Baykeeper a total of two thousand dollars (\$2,000.00) for costs and fees associated with monitoring Central Concrete's compliance with this Settlement Agreement through the termination date of this agreement. The total compliance monitoring fund payment shall be made payable to Baykeeper within thirty (30) days of the submission of any Action Plan required pursuant to Paragraph 14.

26. **Interest on Late Payments:** Central Concrete shall pay interest on any payments, fee or costs owed to Baykeeper under this Settlement Agreement that Baykeeper has not received by the date due. The interest shall accrue starting the first day after the payment is due and shall be computed at 1.5% per month (18% per year).

27. **Dispute Resolution:** If a dispute under this Settlement Agreement arises, or either Party believes that a breach of this Settlement Agreement has occurred, the Parties shall schedule a meet and confer within ten (10) business days of receiving written notification from the other Party of a request for a meeting to determine whether a violation of this Settlement Agreement

has occurred and to develop a mutually agreed upon plan, including implementation dates, to resolve the dispute. If the Parties fail to meet and confer or the meet and confer does not resolve the issue, after at least seven (7) business days have passed after the meet and confer occurred or should have occurred, either Party shall be entitled to all rights and remedies under the law before the United States District Court for the Northern District of California. The prevailing Party shall be entitled to seek fees and costs incurred in any such action pursuant to the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. §1365(d), and applicable case law interpreting such provisions.

IV. JURISDICTION OVER PARTIES AND SUBJECT MATTER OF SETTLEMENT AGREEMENT

28. **Jurisdiction:** For the purposes of this Settlement Agreement, the Parties stipulate that the United States District Court of California, Northern District of California, has jurisdiction over the Parties and subject matter of this Settlement Agreement. The Parties stipulate that venue is appropriate in the Northern District of California and that Central Concrete will not raise in the future as part of enforcement of this Settlement Agreement whether Baykeeper has standing to bring any subsequent action pursuant to the Dispute Resolution procedures herein.

29. **Submission of Settlement Agreement to DOJ:** Within three (3) business days of receiving all of the Parties' signatures to this Settlement Agreement, Baykeeper shall submit this Settlement Agreement to the U.S. Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The agency review period expires forty-five (45) calendar days after receipt by the DOJ, evidenced by correspondence from DOJ establishing the review period. In the event DOJ comments negatively on the provisions of this Settlement Agreement, the Parties agree to meet and confer to attempt to resolve the issues raised by DOJ. If for any reason the U.S. Department of Justice should decline to approve this Settlement Agreement in the form presented, the Parties shall use their best efforts to work together to modify the Settlement Agreement within thirty (30) days so that it is acceptable to the U.S. Department of

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Justice.

V. WAIVER AND RELEASES

30. **Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on behalf of its officers, directors, employees, parents, subsidiaries, affiliates, and each of their successors and assigns releases Central Concrete, its officers, directors, employees, members, parents, subsidiaries, affiliates, successors or assigns, agents, attorneys, and other representatives from and waives all claims raised in the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

31. **Central Concrete's Waiver and Release of Baykeeper:** Central Concrete, on its own behalf and on behalf of its officers, directors, employees, members, parents, subsidiaries, affiliates, or their successors or assigns release Baykeeper and its officers, directors, employees, members, parents, subsidiaries, and affiliates, and each of their successors and assigns from, and waive all claims which arise from or pertain to, the 60-Day Notice, including all claims for fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed for matters included in the 60-Day Notice.

VI. MISCELLANEOUS PROVISIONS

32. **Effective Date:** The Effective Date of this Settlement Agreement shall be the last day for the U.S. Department of Justice to provide comment on this Settlement Agreement, i.e., the 45th day following the U.S. Department of Justice's receipt of the Settlement Agreement.

33. **Term of Settlement Agreement:** This Settlement Agreement shall continue in effect for two (2) years after the Effective Date (the "Term"), at which time the Settlement Agreement, and all obligations under it, shall automatically terminate. However, if Central Concrete does not discharge stormwater from its Facility during the 2015-16 Wet Season, this Settlement Agreement, and all obligations under it, shall terminate one (1) year from the Effective Date.

34. **Early Termination:** If Central Concrete should cease industrial operations at the site and file a Notice of Termination ("NOT") under the Industrial Stormwater Permit or New

Industrial Stormwater Permit prior to the termination date of this Settlement Agreement, Central Concrete shall send Baykeeper a copy of the proposed NOT concurrent with its submittal to the Regional Water Board. Within ten (10) days of the Regional Water Board's approval of the NOT, Central Concrete shall notify Baykeeper in writing of the approval and remit all outstanding payments, including stipulated payments, to Baykeeper. In the event a new successor or assign continues industrial operations at the site and assumes responsibility for implementation of this Settlement Agreement pursuant to Paragraph 45, Central Concrete shall notify Baykeeper within ten (10) days of the transition.

35. **Execution in Counterparts:** The Settlement Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

36. **Signatures:** The Parties' signatures to this Settlement Agreement transmitted by facsimile or electronic mail transmission shall be deemed binding.

37. **Construction:** The language in all parts of this Settlement Agreement, unless otherwise stated, shall be construed according to its plain and ordinary meaning. The captions and paragraph headings used in this Settlement Agreement are for reference only and shall not affect the construction of this Settlement Agreement.

38. **Authority to Sign:** The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Party and have read, understood, and agreed to all of the terms and conditions of this Settlement Agreement.

39. **Integrated Settlement Agreement:** All agreements, covenants, representations, and warranties, express or implied, oral or written, of the Parties concerning the subject matter of this Settlement Agreement are contained herein.

40. **Severability:** In the event that any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

41. **Choice of Law:** This Settlement Agreement shall be governed by the laws of the United States or, where applicable, the laws of the State of California.

42. **Full Settlement:** This Settlement Agreement constitutes a full and final settlement of this matter. It is expressly understood and agreed that the Settlement Agreement has been freely and voluntarily entered into by the Parties with and upon advice of counsel.

43. **Negotiated Agreement:** The Parties have negotiated this Settlement Agreement, and agree that it shall not be construed against the party preparing it, but shall be construed as if the Parties jointly prepared this Settlement Agreement, and any uncertainty and ambiguity shall not be interpreted against any one party.

44. **Modification of the Agreement:** This Settlement Agreement, and any provisions herein, may not be changed, waived, or discharged unless by a written instrument signed by each of the Parties.

45. **Assignment:** Subject only to the express restrictions contained in this Settlement Agreement, all of the rights, duties, and obligations contained in this Settlement Agreement shall inure to the benefit of and be binding upon the Parties, and their successors and assigns.

46. **Mailing of Documents to Baykeeper/Notices/Correspondence:** Any notices or documents required or provided for by this Settlement Agreement or related thereto that are to be provided to Baykeeper pursuant to this Settlement Agreement shall be, to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand delivery to the following address:

San Francisco Baykeeper
Attention: Nicole Sasaki
1736 Franklin Street, Suite 800
Oakland, CA 94612
Telephone: (510) 735-9700 x110
E-mail: nicole@baykeeper.org

Unless requested otherwise by Central Concrete, any notices or documents required or provided for by this Settlement Agreement or related thereto that are to be provided to Central
SETTLEMENT AGREEMENT

Concrete pursuant to this Settlement Agreement shall, to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below, or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand delivery to the addresses below:

Jeff L. Davis
Vice President & General Manager
Central Concrete Supply Company, Inc.
755 Stockton Avenue
San Jose, CA 95126
Telephone: (408) 690-2066
Email: jdavis@us-concrete.com

and

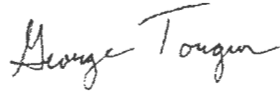
Stephen A. Mansfield
Akin Gump Straus Hauer & Feld, LLP
580 California Street, Suite 1500
San Francisco, CA 94104
Telephone: (415) 765-9519
Email: smansfield@akingump.com

Notifications of communications shall be deemed submitted on the date that they are emailed, or postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any changes of address or addressees shall be communicated in the manner described above for giving notices.

47. Impossibility of Performance: No Party shall be considered to be in default in the performance of any of its obligations under this Settlement Agreement when performance becomes impossible due to circumstances beyond the Party's control, including without limitation any act of God, act of war or terrorism, fire, earthquake, and flood. "Circumstances beyond the Party's control" shall not include normal inclement weather, economic hardship, or inability to pay. Any Party seeking to rely upon this Paragraph shall have the burden of establishing that it could not reasonably have been expected to avoid, and which by exercise of due diligence has been unable to overcome, the impossibility of performance.

SAN FRANCISCO BAYKEEPER

Date: June 9, 2015

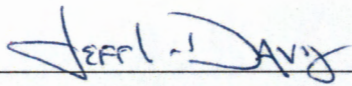


George Torgun

Managing Attorney, San Francisco Baykeeper

Central Concrete Supply, Co., Inc.

Date: June 19, 2015



By:

JEFF L. DAVIS

Title:

VICE PRESIDENT GENERAL MANAGER